SUPREME COURT OF THE UNITED STATES.

No. 68.

JAMES BROWN, PLAINTIFF IN ERROR,

VS.

JOHN CLARKE, DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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JAMES BROWN
vs. } Writ of error.
JOHN CLARKE.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judge of the District Court of the United States for the northern district of Mississippi, greeting:

Whereas, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said district court before you, between John Clarke, plaintiff, and James Brown, defendant, a manifest error hath happened to the great damage of the said James Brown, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you that if judgment be therein given, then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme [Court,] the second Monday of January, in the year
[L. S.] of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth year.

Issued the 24th day of August, 1842.

G. M. RAGSDALE, *Clerk*
Of the District Court of the United States
For the Northern District of Mississippi.

JOHN CLARK
846 vs. } Exemplification.
JAMES BROWN.

Pleas had at a district court *court* of the United States for the northern district of Mississippi, began and held at the town of Pontotoc, in and for said district, on the first Monday of June, A. D. 1841.

Present, the Hon. Samuel J. Gholson, judge of said court.

Be it remembered, that on the twenty-first day of December, A. D. 1840, John Clark, who is a citizen of the State of Tennessee, sued out of the office of the clerk of the district court of the United States for the northern district of Mississippi his certain summons, in the words and figures following, to wit:

"UNITED STATES OF AMERICA, } ss.
Northern district of Mississippi. }

The President of the United States, to the marshal of the northern district of Mississippi, greeting: We command you, without delay, to summon James Brown, a citizen of the State of Mississippi, residing in the northern district thereof, that he be and appear before the district court of the United States to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of June next, to answer to John Clark, a citizen of the State of Tennessee, of a plea of trespass on the case to his damage four thousand dollars, and that he do file his plea of defence with the clerk of said court on or before the meeting of the same, or judgment will be given against him by default, and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, at Pontotoc, the first Monday of December, A. D. 1840, and in the sixty-fifth year of the independence of the United States.

Issued December 21st, 1840.

G. M. RAGSDALE, *Clerk.*"

Endorsed thus: "This is an action of trover for five negro slaves, by name Susan, of the value of $500; Lethe, of the value of $500; Julia, of the value of $500; Tom, of the value of $700; and Squire, of the value of $600; amounting together to the sum of $2,800. Which negroes or their value, the sum of $2,800, and interest, is the amount actually demanded. Judgment will be required at the return term of this writ. No bail is required.

A. M. CLAYTON,
Atto. for plaintiff."

Marshal's return.

"Came to hand Dec. 21st, 1840. Dec. 21st, executed on defendant by handing him a true copy, after the sale of the negroes by the sheriff, and the purchase.

ADOLPHUS G. WEIR,
Mar. No. Dist. Mis.
By JNO. P. CARUTHERS, *Dep'y.*"

Plaintiff's declaration filed 21st Dec., 1840, in the words and figures following, to wit:

"UNITED STATES OF AMERICA, *State of Mississippi.*

District Court of the United States for the northern district of said State, at Pontotoc, June term 1841.

John Clark, a citizen of the State of Tennessee, by attorney, complains of James Brown, a citizen of the State of Mississippi, residing in the northern district thereof; for that, whereas the said John Clark heretofore, to wit, on the 8th day of December, 1840,

at the district aforesaid, was lawfully possessed, as of his own property, of the following negro slaves, to wit: Susan, of the value of five hundred dollars; Lethe, of the value of five hundred dollars; July Ann, of the value of five hundred dollars; Tom, of the value of seven hundred dollars; and Squire, of the value of six hundred dollars; and being so possessed thereof, he, the said John Clark, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, casually lost the said negro slaves out of his possession, and the same, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, came to the possession of the said James Brown by finding. Yet the said defendant, James Brown, well knowing the said slaves to be the property of the said plaintiff, and of right to belong and appertain to him, but contriving to deceive and defraud the plaintiff in this behalf, hath not as yet delivered the said slaves, or any or either of them, to the said plaintiff, although often requested so to do, and hath hitherto wholly refused so to do; and afterwards, to wit, on the day and year aforesaid, at the district aforesaid, converted and disposed of the said slaves to his own use, to the damage of the said plaintiff of four thousand dollars; and therefore he brings suit, &c.

A. M. CLAYTON, *Atto. for plaintiff.*"

Defendant's plea filed in the words and figures following, to wit:

"JAMES BROWN vs. JOHN CLARK. } Plea.

And the said defendant, by attorney, comes and defends the wrong and injury, when, &c., and says that he is not guilty of the said supposed grievances above laid to his charge, or any or either of them, in manner or form as the said plaintiff has above thereof complained against him; and of this he puts himself upon the country.

BRADFORD, HOWRY & TALIAFERRO,
Atto's for def't."

"And plaintiff doth the like.

CLAYTON, *for pl'ff.*"

Order of court at June term, A. D. 1841, *as follows, to wit:*

"JOHN CLARK 37 vs. JAMES BROWN. } Thursday, June the 10th, 1841.

This cause is continued, by operation of law, until the next term of this court."

Order of court at December term, A. D. 1841, *as follows, to wit:*

"JOHN CLARK 44 vs. JAMES BROWN. } Thursday, December the 30th, 1841.

This day came the parties, by attorneys, and thereupon came a

jury of good and lawful men, to wit: Thomas B. Brooks and eleven others, who being elected, tried, and sworn, well and truly to try the issue joined, upon their oaths do say, that they find the issue in favor of the plaintiff, and assess the value of the slaves mentioned in the declaration as follows, to wit: Susan, to the value of five hundred dollars; Lethe, to the value of five hundred dollars; Judy Ann, to the value of five hundred dollars; Tom, to the value of seven hundred dollars; and Squire, to the value of six hundred dollars; and the damages sustained by the detention of the same to the sum of four hundred and twenty-five dollars, as per agreement of parties. It is, therefore, considered by the court that plaintiff recover of defendant the sum of thirty-two hundred and twenty-five dollars, the aggregate amount of the damages aforesaid by the jury assessed, and also the cost in this cause expended."

Defendant's motion to set aside the verdict of the jury in this cause, in the words following, to wit:

"JOHN CLARK
vs.
JAMES BROWN.

This day came the defendant, by his counsel, and moved the court to set aside the verdict in this cause, and grant him a new trial, and shows him the following reasons: that the charge of the court to the jury is not warranted by the law; that the verdict of the jury is against the law of the case, and not by the evidence.

BRADFORD, CHALMERS, & TALIAFERRO,
Attorneys.

Order of court, at December term, A. D. 1841, *overruling defendant's motion for a new trial, in the words and figures following, to wit:*

"JOHN CLARK
44 vs. } Thursday, December the 30th, 1841.
JAMES BROWN.

This day came the parties, by their attorneys, and then came on to be heard defendant's motion for a new trial; and after argument, as well in support of as against said motion, it is considered by the court that the same be overruled; to which decision of the court overruling said motion, the defendant, by attorney, excepts, and tenders his bill of exceptions, which is signed and sealed by the court, and ordered to be made a part of the record in this cause."

Bill of exceptions filed, in the words and figures following, to wit:

"THE UNITED STATES OF AMERICA,
The Northern District of Mississippi.

JOHN CLARKE
vs. } In trover.
JAMES BROWN.

Be it remembered, that on the trial of this cause, the following statements of facts was agreed by the counsel for the plaintiff and

defendant as evidence for the jury, to wit: That the negroes sued for in this action are the same which are mentioned in the record of the circuit court of La Fayette county, of a case wherein James Brown, the defendant in this cause, was plaintiff, and Haywood Cozart was defendant, which said record is to be read as evidence in this cause for what it is worth; that said negroes were the property of Haywood Cozart, the defendant in the execution of Clarke from this court, and of Brown, from the circuit court of La Fayette county. It is also admitted that the sale of the marshal was forbidden by Brown before it took place, and the sale by the sheriff was forbidden by Clarke; that said negroes were each of the value set out in the writ and declaration in this cause, and that their hire, for the time they have been in the possession of Brown up to this time, is worth $425. It is admitted that said Brown was in the possession of said negroes at the time of the commencement of this suit, and still have them in possession. It is admitted that there was demand made of said negroes by said Clark of said Brown before this suit was brought, and that said Brown refused to deliver them. It is also admitted that the negroes sued for were taken out of the possession of the plaintiff after the sale of the marshal to him. The counsel for the plaintiff then read in evidence the record and proceedings in this court in the suit of John Clark against Haywood Cozart, which is in the words and figures following: (The clerk will here copy the record of the above suit, from the writ and declaration to the execution and return, inclusive.) The plaintiff also brought forward John P. Caruthers, deputy marshal for the northern district of Mississippi, who made oath that he is the deputy marshal of this court, levied the execution in the case of Clark vs. Cozart, above referred to, upon the negroes in controversy in this suit, and that he sold them, as stated in his return upon the said execution, to the plaintiff in this cause; that at the time he levied said execution upon said slaves, they were in the possession of said Haywood Cozart; that said Cozart then had in possession 15 or 18 other slaves; and that he took those which he levied upon away with him, and lodged them in the jail of La Fayette county for safe keeping; that he afterwards sold said slaves and delivered them to the plaintiff in this suit, and after his said sale, they were taken out of the possession of said plaintiff by the sheriff of La Fayette county—sold by him, and purchased by the defendant in this suit. He stated that Hiram Cozart, the security in the forthcoming bond, in the case [of] Brown vs. Cozart, is the brother of said Haywood Cozart—that he was a man of small property—lived with his said brother, and claimed some two or three slaves; that said Cozart lived some six miles from the defendant, Brown; that after the levy which he made as aforesaid upon said negroes, and before the sale which he made, the two Cozarts left the State of Mississippi for Texas, and carried away with them all the other slaves which they had, except those which he had levied on. The plaintiff also

read the bill of sale of the marshal to him for the negroes in suit in this case, which is herein copied and made a part of this bill of exceptions.

The defendant then gave in evidence the record and proceedings of a suit in the circuit court of La Fayette county, wherein he, said defendant, was plaintiff, and Haywood Cozart was defendant, which is in the words and figures following, to wit:

"Monday, May 18, 1840.

THE STATE OF MISSISSIPPI, *La Fayette county, ss.*

Caption.—Be it remembered, that at a circuit court began and held in and for the county of La Fayette, in the State of Mississippi, at the court-house in the town of Oxford, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and forty; then was present the honorable Stephen Adams, presiding judge of the ninth judicial district of the State aforesaid, but who, by an interchange of circuits with the honorable Federick W. Huling, now presides in the eighth judicial district of the State aforesaid.

Among other things, the following were had, to wit:

Be it remembered, that heretofore, to wit, on the 29th day of April, 1840, Haywood Cozart appeared in the office of the clerk of the circuit court of said county, and made his office confession of judgment to James Brown, in the words and figures following, to wit:

THE STATE OF MISSISSIPPI, *La Fayette county.*

In the Circuit Court of La Fayette county to May term, 1840.

Plaintiff's affiat and description of notes.

James Brown says on oath, that Haywood Cozart is justly indebted to him to the amount of eight thousand six hundred and forty dollars, thirty-seven cents, or thereabouts, on three instruments of writing, in the words and figures following, to wit:

First note.

"On or before the first of January next, I promise to pay James Brown, or order, two thousand eight hundred and eighty dollars for value received, this 27th day of April, 1838.

H. COZART. [L. S.]

Upon which said note is the following credits, to wit:

Credits.

Received on the within note one hundred and thirty-five dollars, 21 of May, 1838. JAMES BROWN.

Received one hundred and thirty-two dollars $16\frac{2}{3}$ cents.

JAMES BROWN.

Received two hundred and forty-nine dollars and twenty-two cents, 8th January, 1839. Paid on this note $158 31, January 1, 1840. JAMES BROWN.

2nd Note.

On or before the first of January, eighteen hundred and forty, I promise to pay James Brown, or order, the sum of two thousand eight hundred and eighty dollars for value received, this 27th April, 1838. H. COZART. [L. S.]

3d Note.

One day after date, I promise to pay James Brown, or order, three thousand two hundred dollars for value received, this 28th of April, 1840. H. COZAZT. [L. S.]

Which remains due and unpaid, and was not given for a fraudulent or usurious consideration.

Sworn to and subscribed before me, the 29th day of April, 1840.
C. M. PHIPPS, *Clk.*
JAMES BROWN.

Defendant's confession.

I do hereby acknowledge myself indebted to the above named James Brown in the sum of eight thousand six hundred and forty dollars and 37 [cents,] including interest up to the first day of the next term of the circuit court aforesaid, and give my consent for judgment to be rendered against me at the next circuit court for said amount, and all legal costs accruing thereon without stay of execution. H. COZART.

Signed and acknowledged before me, April 29, 1840.
C. M. PHIPPS, *Clk.*

MONDAY, May 18, 1840.

JAMES BROWN
vs.
HAYWOOD COZART.

Judgment made absolute.

It appearing to the satisfaction of the court, that the defendant in this case appeared in the office of the clerk of the circuit court of La Fayette county, on the 29th day of April, A. D. 1840, and made an office confession of judgment to the said plaintiff for the sum of eight thousand six hundred and forty dollars and thirty-seven cents. It is therefore considered by the court that the said plaintiff recover of the said defendant the sum of eight thousand six hundred and forty dollars and thirty-seven cents, the debt, also the costs in this behalf expended.

Upon which said judgment, the said plaintiff, on the 6th day of June, 1840, sued out of the office of the clerk of the circuit court of La Fayette county, his certain writ of fieri facias against the said defendant, in the words and figures following, to wit:

First fieri facias.

The State of Mississippi to the sheriff of La Fayette county, greeting:

We command you that of the goods and chattels, lands and tenements, of Haywood Cozart, late of your county, you cause to be made the sum of eight thousand six hundred and forty $\frac{37}{100}$ dollars, which James Brown lately in our circuit court for the county of La Fayette hath recovered against him for his damages, which he hath sustained by reason of the non-performances of a certain promise and assumpsit by the said Haywood Cozart to the said James Brown lately made, with interest on said sum at 8 per centum per annum from the 18th day of May, 1840, until paid; also the sum of seven $\frac{12\frac{1}{2}}{100}$ dollars for his costs by him about this suit in that behalf expended, whereof the said Haywood Cozart is convicted as appears to us of record, and that you have the said moneys before the judge of our said court at the court house in Oxford, on the third Monday of November next, to render to the said James Brown his damages and costs aforesaid, and have you then and there this writ.

Witness the honorable Federick W. Huling, presiding judge of the 8 judicial district of the State of Mississippi, the third Monday of May, 1840, and the 64th year of American Independence, and the seal of said court. Issued the 6th day of June, 1840.

C. M. PHIPPS, *Clk.*

Upon which said writ of fieri facias is endorsed the bill of costs in the words and figures following, to wit:

Bill of clerk's costs.

Docketing suit 12½ cents, seal thereto 25 cents -	37½
Of costs of appearances 12½ cents, motion 12½ cents, order 12½ cents - - - - - - -	37½
Making papers 50 cents, judgment 25 cents, record $1 -	1 75
Certificate thereof 25 cents, issuing execution 75 cents, seal 25 cents - - - - - -	1 25
Certificate of costs 25 cents, jury tax $3 00 - -	3 25
	7 12½

Certificate of costs.

I certify that the above is a true copy of the bill of costs.

C. M. PHIPPS, *Clk.*

Upon which said writ of fieri facias, the sheriff made his return in the words and figures following, to wit:

Sheriff's return.

"Came to hand 20th June, 1840, and levied on the following negroes, (viz.) Harry, Dinah, Squire, Philip, Lethey, Jourdin, Judy,

Ann, Susan, Frank, Stephen, Henry, Nelson, Aggy, Sarah, Jane, Ben, Granville, Emarintha, Hannah, Bob, Tom, and Jack, as the property of H. Cozart, and a forthcoming bond taken with Hiram M. Cozart security. This security was taken by and with the advice and consent of the plaintiff.

The property was not delivered, nor the money paid, as required by the bond; it is therefore forfeited and herewith returned.

August 17th, 1840. C. G. BUTLER, *Shff.*

Which said bond is in the words and figures following, to wit:

Forthcoming bond.

THE STATE OF MISSISSIPPI, *La Fayette county, ss:*

Know all men by these presents, that we, Haywood Cozart and Hiram M. Cozart, of the county of La Fayette, and State of Mississippi, are held and firmly bound unto James Brown in the sum of seventeen thousand and eighty-two dollars and forty-four cents, for which payment well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, this 24th day of July, 1840. The condition of the above obligation is such, that Charles G. Butler, sheriff of La Fayette county, hath this day levied an execution issued from the clerk's office of the circuit court of said county in favor of said James Brown against the said Haywood Cozart for the sum of eight thousand six hundred and forty dollars and 37 cents debt and damages, and seven dollars 12½ cents for costs, upon the following property of said Haywood Cozart, to wit: Hary, Dinah, Squire, Philip, Lethey, Jourdin, Judy Ann, Frank, Stephen, Henry, Nelson, Aggy, Sarah Jane, Ben, Granville, Emarintha, Hannah, Susan, Valentine, Bobb, Tom, and Jack, negro slaves. Now if the said Haywood Cozart and Hiram M. Cozart above bound shall well and truly deliver the said property to the said Charles G. Butler on the 17th day of August next by twelve o'clock noon, in the town of Oxford, to be sold to satisfy said debt, damages and costs, unless the same be previously satisfied, then this obligation to be void; otherwise to remain in full force and virtue.

H. COZART [L. S.]
H. M. COZART. [L. S.]

Upon which said bond, the sheriff made his return in the words and figures following, to wit:

Sheriff's return on bond.

"The property was not delivered, nor the money paid, as required by this bond; it is therefore forfeited and herewith returned.

August 17th, 1840.

C. G. BUTLER, *Shff.*

THE STATE OF MISSISSIPPI.

Capt. at Nov. Term, 1840.

Be it remembered, that at a circuit court began and held in and for the county of La Fayette, in the State aforesaid, at the court house in the town of Oxford, on the sixteenth day of November, in the year of our Lord, one thousand eight hundred and forty, there was present the hon. Federick W. Huling, presiding judge of the eighth judicial district of the State of Mississippi.

On Monday, the 23d day of November, 1840, and being the seventh day of the term of said court, among other things, the following were had, to wit:

JAMES BROWN vs. HAYWOOD COZART. } Motion by plaintiff to quash forthcoming bond of execution.

Motion to quash judgment.

This day this motion came on to be heard, and argument of counsel thereupon being had, and the court being fully advised of the law, which seems to the court to be sufficient, it is therefore considered by the court that said motion be sustained, and said bond be quashed.

And thereupon, the said plaintiff, on the 23d day of November, 1840, sued out of the office of the clerk of the circuit court of said county, his other certain writ of fieri facias against the said defendant in the words and figures following, to wit:

Alias fi. fa.

The State of Mississippi to the sheriff of La Fayette county, greeting:

We command you, as we have heretofore done, that of the goods and chattels, lands and tenements, of Haywood Cozart, late of your county, you cause to be made the sum of eight thousand six hundred and forty $\frac{37}{100}$ dollars which James Brown lately in our circuit court for the county of La Fayette hath recovered against him for his damages, which he hath sustained by reason of the non-performance of a certain promise and assumption by the said Haywood Cozart to the said James Brown lately made, with interest on said sum at 8 per centum per annum from the 18th day of May, 1840, until paid; also the sum of seven $\frac{12\frac{1}{2}}{100}$ dollars for costs by him about his suit in that behalf expended, whereof the said Haywood Cozart is convicted, as appears to us of record, and that you have the said moneys before the judge of our said court at the court house in the town of Oxford, on the third Monday of May next, to render to the said James Brown for his damages and costs aforesaid, and have you then and there this writ.

Witness the honorable Federick W. Huling, presiding judge of the 8th judicial district of the State of Mississippi, the 3d Monday of November, 1840, and the 64th year of American Independence, and seal of said court. Issued 23d day of November, 1840.

C. M. PHIPPS, *Clerk.*

Upon which said writ of fieri facias is endorsed the bill of costs in the words and figures following, to wit:

Clerk's bill of costs.

Clerk's costs.—Docketing suit 12½ cents, filing papers 25 cents - - - - - -	37½
Certificate of filing 25 cts., motion 12½ cts., order 12½ cts.	50
Making out the papers 50 cts., judgment 25 cents, record $1 - - - - - -	1 75
Issuing fi. fa. 75 cents, seal 25 cents, certificate of costs 25 cents - - - - - -	1 25
Certificate 25 cents, jury tax $3 00 - - -	3 25
	7 12½

I certify that the above is a true copy of the bill of costs in this case.

C. M. PHIPPS, *Clk.*

Upon which said writ of fieri facias the sheriff made the following endorsements and return to wit:

Sheriff's return on alias fi. fa.

"Came to hand and levied on the following negroes in the hands of the dep. marshal of the N. D. M. to wit: Tom, Squire, Jordan, Julian, Susan, and Leathy, and also on 1 negro man Harry, and 1½ sections of land, viz: sec. No. 4, and east half of 5 township No. 8, range No. 4 west, Nov. 23, 1840, and also on stock of hogs about 14 head, 1 bureau, 2 spinning wheels, 3 ploughs, 3 weeding hoes, 1 wagon, 4 set of gear, a lot of cotton on the premises of said Cozart, and also a lot of cotton at Wilson's gin, 389 yards bagging, 477 pounds rope, a lot of fodder, 3 raw hides, and 2 harrows. 26 Nov. 1840.

C. G. BUTLER, *Shff.*

By T. W. PULLIAM, *Dep. Shff.*

Levied on the following negroes, to wit: Tom, Squire, Jourdan, July Ann, Susan, and Leathey. After a sale was made by the deputy marshal, J. P. Caruthers, I was indemnified by plaintiff, James Brown, and required to make this levy on 7th day of December, 1840. J. P. Caruthers bid the boy Jordan in for costs, and agreed to hold him subject to the decision of the others, and thereupon carried him home the day above.

C. G. BUTLER, *Shff.*

I do hereby appoint O. Gundy my special deputy to levy this fi. fa. on a gig at Wyatt. Given under my hand and seal this 8 Dec., 1840. C. G. BUTLER, *Shff.* [L. S.]

Levied on one gig, December 10, 1840.

C. G. BUTLER, *Shff.*
By O. GUNDY, *Dep. Shff.*

By virtue of this fi. fa., I have sold all of said property, except the last cotton levied on, and the fodder, for the sum of forty-one hundred and twenty-two dollars and five cents. The negro boy Squire I sold to James Brown for $350, Julian to same person for $325, Tom to same for $601, Susan to same for $450, Leatha to same for $450, making for said slaves $2,176, which is included in the above amount of $4,122 05. 4th January, 1841.

C. G. BUTLER, *Shff.*

THE STATE OF MISSISSIPPI, *La Fayette county.*

I, Claibourne M. Phipps, clerk of the circuit court in and for the county of La Fayette aforesaid, do hereby certify that the foregoing is a full, true, and perfect transcript of the record in the case wherein James Brown is plaintiff, and Haywood Cozart is defendant.

Given under my hand and the seal of said court at office on the 21st day of September, A. D. 1840.

C. M. PHIPPS, *Clerk.*"

(The following paragraph in brackets has the word "*error*" written over its face in red ink.)

[The plaintiff also brought forward John P. Caruthers, deputy marshal for the northern district of Mississippi, who made oath that he is the deputy marshal of this court, levied the execution in the case of Clark vs. Cozart above referred to upon the negroes in controversy in this suit, and that he sold them as stated in his return upon the said execution to the plaintiff in this cause; that at the time he levied said execution upon said slaves, they were in the possession of said Haywood Cozart; that said Cozart then had in possession 15.]

This being all the evidence in this cause, the counsel for the plaintiff requested the court to give the following instructions to the jury, to wit: That if they believe the marshal made the first levy on the property in dispute, the sale under his execution was good, and vested in the purchaser a good title as against other executions, whether founded on judgments of the State or Federal courts. That if the jury believe that the sheriff levied the execution from the circuit court of La Fayette county, on the negroes in the declaration mentioned, and took a forthcoming bond which was afterwards forfeited, the same was a satisfaction of the original judgment, and the subsequent quashing of the

forthcoming bond did not affect the rights of the plaintiff in this case acquired by his levy after the forfeiture of said bond. That if the jury believe that the sheriff of La Fayette county, after the levy of the execution from the circuit court of said county took a forthcoming bond in the case, which was afterwards forfeited, and that the negroes therein named remained in the possession of the defendant Cozart, the levy of the marshal made after the forfeiture of said bond was valid, and the sale under it also valid, notwithstanding the bond was quashed before the sale, but after the levy. That if the jury believe that defendant Brown agreed to approve of the security in the forthcoming bond, and thereby permitted the slaves to remain in the possession of the said Cozart, the subsequent quashing of said bond and execution upon his own motion, does not put him in any other situation than if he had issued no execution. That if the jury believe the approval of said bond by said Brown was with a view to let said Cozart remain in possession of said slaves, and to keep off and delay other creditors, then they should find for plaintiff. That if the jury believe the conduct of said Brown was fraudulent in obtaining and proceeding upon his judgment, then the jury should find for the plaintiff. All of which instructions were objected to by defendant's counsel, but the objection was overruled by the court, and said instructions were given in charge to the jury. The defendant's counsel then offered the following instructions as a charge to the jury, to wit: That if the jury believe from the evidence, that defendant Brown obtained a prior judgment in the circuit court of La Fayette county to the judgment obtained by plaintiff Clarke in this court, that Brown thereby obtained a prior lien upon Cozart's property for satisfaction of said judgment, and that said lien could only be defeated and postponed by same act of Brown fraudulent in law. That the taking of the delivery bond by the sheriff of La Fayette county, and quashing it, are not acts deemed fraudulent in law. That the levy and sale of the negroes of Cozart by the marshal of this court by execution on a junior judgment, was subject to the lien of the prior judgment, and communicated no title to purchaser paramount to the lien of the prior judgment. That the forfeiture of a bond which is quashed for want of conformity to the statute, is not such an one as has the force and effect of a judgment, because not conforming to the statute; which instructions were objected to by plaintiff's counsel, and the objections were sustained by the court, who refused to give the same in charge to the jury. The jury returned their verdict for the plaintiff, and the defendant moved the court to set aside the verdict and grant a new trial, which was overruled by the court. To all which defendant excepts, and tenders this his bill of exceptions, which he prays may be signed and sealed by the court, and made a part of the record in this case; which is done accordingly.

S. J. GHOLSON. [L. S.]

Copy of appeal bond, to wit:

"UNITED STATES OF AMERICA, *Northern District of Mississippi, sct.*

Know all men by these presents, that we, James Brown, Robert H. Laird, [and] Samuel H. Ford, are held and firmly bound unto John Clarke in the just and full sum of six thousand four hundred and fifty dollars and cents, lawful money of the United States, to be paid to the said John Clark, his lawful attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 31st day of December, A. D. 1841.

The condition of this obligation is such, that whereas, at a term of the district court of the United States for the northern district of Mississippi, commenced and held at the town of Pontotoc in said district, on the first Monday of December, 1841, judgment was rendered by said court in favor of the said John Clark against the said James Brown for the sum of thirty-two hundred and twenty-five dollars and cents, and costs of suit; and the said James Brown has sued out a writ of error from the Supreme Court of the United States to reverse said judgment. Now, if the said James Brown shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs, as the said Supreme Court of the United States shall adjudge in the premises, if he, the said James Brown, shall fail to make his plea good, then and in that case this obligation to be void, otherwise to remain in full force and virtue.

JAMES BROWN, [L. S.]
R. H. LAIRD, [L. S.]
SAM'L H. FORD, [L. S.]

Sealed and delivered in presence of
G. M. RAGSDALE, *Clerk.*

Order of court approving said bond, to wit:

"Friday, December the 31st, 1841.

It is ordered by the court that the bond executed by James Brown for a writ of error, in the case of John Clark against said James Brown, be and the same is hereby approved."

UNITED STATES OF AMERICA, *Northern District of Mississippi.*

I, G. M. Ragsdale, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify that the above and foregoing 23 pages contain a full, true, and complete transcript of all the proceedings had in said court, in the aforesaid cause of John Clarke against James Brown, as the same appears of record and on file in my office.

[L. S.] Given under my hand and the seal of said court at office in Pontotoc, this 24th day of August, 1842.

G. M. RAGSDALE, *Clerk.*

Filed, 13th Dec., 1842.